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Land Law Meets the Sea

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Ron Harris

Land Law Meets the Sea*

Humans are terrestrial mammals as the introduction to this intriguing volume reminds us. Their normative orders were shaped on the land. Applying human law to the seas and oceans of this planet was never a straightforward process. Two historical developments placed new challenges and directions on early modern Europe's legal encounters with the seas. The Westphalian order that emerged out of the long religious wars centralized concepts of sovereignty, borders, citizenship and nation states – all land-based concepts. The European expansion through the Atlantic and Indian Oceans to the Americas and Asia gave rise to two new sets of legal problems: the first relating to the encounters between sovereign European states on the high seas around the globe, and the second involving encounters with non-European polities and laws in and around newly annexed islands and seaboard across these oceans. The book chapters deal with various interplays of these reformulated sets of problems in the early modern era.

This volume was edited by two prominent historians whose approaches cross each other in a manner that is highly promising for legal historians. Rosenthal is an emerging historian of the Atlantic World in the first age of revolution. His interdisciplinary approach combines spatial studies, script analysis, and law. Benton is one of the leaders of the historical turn in international law. She is a historian of the legal history of the British Empire and empires in general from a global perspective. The volume they edited is the outgrowth

of a conference held in the Huntington Library in Pasadena, California, in 2016. The volume aims at advancing our understanding of how the maritime world contributed to the early modern era's global transformation. It demonstrates the complex relationship between humans and seas, and between terrestrial and maritime spaces.

For the sake of the legal historian readers of *Rechtsgeschichte – Legal History*, rather than conventionally reviewing the chapters one-by-one in the order they appear in the book, or based on the themes suggested by the editors in the *Introduction*, I'll address the question of what legal historians can gain from reading this book. To this end, the chapters in the volume will be allocated into three groups: first, chapters that do not deal at all with law but for which I'll suggest possible links to legal history; second, chapters that make preliminary extension of the non-legal analysis into law and for which I will suggest how they can be used and expanded on by legal historians; and third, chapters that deal head-on with law. As usual, this division is not always crystal clear.

In Chapter 1, Carla Rahn Phillips examines the reasons for serving as crew aboard ships given the extreme risks and hardships involved. There was overlap with and switches taking place between naval service and merchant marine crews as well as officers all the way up to the 18th century. Reasons for going to sea included family traditions, economic incentives, legal conscription requirement, and violent coercion. This chapter lays the founda-

* LAUREN BENTON, NATHAN PERL-ROSENTHAL (eds.), *A World at Sea: Maritime Practices and Global History*, Philadelphia: University of Pennsylvania Press 2020, 267 p., ISBN 978-0-8122-5241-5

tion for a future discussion of the application of master and servant law, labor law, slave law, and martial law on board ships.

Margaret Schotte studies the creation of nautical knowledge in Chapter 5. She identifies two basic models: a top-down model used in France and Russia, and a bottom-up model used in Britain and the Dutch Republic. The first model relied more heavily on the study of scientific theory and mathematics, whereas the second model was based on experimentation, practice, and measurement. Many of the more successful explorers and mariners of early modern Europe were actually trained in the second model. The bottom-up model opened up the way for the employment of experienced foreigners and the stealing of nautical knowledge. Chapter 6, written by David Igler, expands the discussion of navigational knowledge beyond Europe to focus on pacific islanders. He reconstructs the travels of a Caroline islander named Kadu on board a Russian ship with a cosmopolitan crew across the South and North Pacific. Igler calls our attention to the methodological complications involved in studying non-European travelers through European sources. These chapters make it possible to further study the role of law in protecting and commercializing European and non-European nautical and geographical knowledge and information at the time in which patent law evolved to protect and monopolize technological craft and industrial knowledge. In Chapter 9, Lisa Norling argues that the common wisdom about a binary gender-based division of labor in which men worked on the sea and women on land is incorrect. The littoral was a complex environment in which women were also getting their hands wet, harvesting the sea, and working with fish. Nevertheless, the further from land, the deeper the water, the larger the prey, and the greater the risk, the more likely men were to do the job. The growing scale of European fisheries in Newfoundland and whaling in the North Atlantic only served to intensify the gender-based division of labor. Here, legal historians can make the next step of asking how the legal regime of gender was extended from land to sea.

Chapter 2, by Adam Clulow and Xing Hang, looks at the way in which Cambodia and Ayutthaya (Siam), two weak South East Asian land-based polities, maneuvered between two maritime regional powers, the Dutch East India Company and Koxinga's Taiwan. While much of the maneu-

vering was done using conventional diplomatic tools, the authors call attention to the use of legal tools. These were not simply treaties in which the powerful exorted privileges from the weak. The weak used legal tools such as employing Chinese sailors and designation of secure maritime spaces as means for bypassing treaty restrictions. More can be said about the shared legal understandings within the context of which the treaties were agreed upon, respected as legitimate, and enforced. In Chapter 8, Catherine Phipps examines a unique moment in Japan's history, and in fact in the West's relationship with the rest of the globe. Initially having had to grant territorial and trade concessions to Western powers, Japan soon reclaimed its sovereignty, extended it to its territorial waters, and next moved forward in building its own territorial claims overseas. Once again, the next step would be to ask: What shared legal understanding did the Japanese, the Chinese, and the Westerners have such that Japan was able to both make its claims and legitimized them? In Chapter 7, Jeppe Mulich looks at runaway slaves in the Caribbean. The existence of so many islands, governed by different European countries, in such close proximity to each other provided ample opportunities for maronage. Furthermore, a few of the smaller islets were not claimed by any European country, and vessels had among their crews an indistinguishable mix of ex-slaves and runaway slaves. This chapter touches upon the legal aspect of this phenomenon. The European countries at times collaborated in enforcing the law against the running slaves, yet in wartime they often refused to do this as part of the legal warfare and because they preferred the interest of their own resident employers over those of the foreign slave owners.

The two remaining chapters address the law head-on. Nathan Perl-Rosenthal's Chapter 4 demonstrates how the law dealt with complex multinationalism on board ships. In the era of privateering and in times of declared war, the national identity of a ship had to be discerned. Admiralty jurisdiction, substantive prize law, and evidentiary rules were at play. Letters created on land played a key role in determining the identity of ships and cargo on the high seas. Matthew Taylor Raffety suggests in Chapter 3 that a legal term can serve as a method for bringing coherence to early modern maritime history. He identifies a few relevant realms: the view of maritime law as an extension of municipal and territorial law, or as a distinctly

international law; the normative standing of customs in maritime law; the role of non-state and semi-state actors, such as chartered corporations as creators of maritime law and major players within it; and finally the way in which encounters with indigenous legal orders affected European maritime law.

Benton and Perl-Rosenthal wisely collected wide array of high quality historians that wrote fascinating chapters. Each of the chapters in this

volume is valuable for legal historians. The first batch requires more imaginative use, the second shows the path that can be followed more extensively, and the third batch throws legal historians straight into the center stage of legal action. The collection can inspire new research directions for historians of maritime law, colonial law, international law, and beyond.

